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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 LENIER AYERS,

11 Plaintiff,

12 v.

13 HENRY RICHARDS, et al.,

14 Defendants.

No. C08-5541 RJB/KLS

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

15 This matter comes before the Court on the Report and Recommendation of Magistrate
16 Judge Karen L. Strombom (Dkt. 45), and Plaintiff's Motion to Retract TRO (Dkt. 47). The
17 Court has considered the relevant documents and the remainder of the file herein.

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19 On February 2, 2009, the Plaintiff filed an amended complaint alleging, among other
20 things, that the Defendants violated his First and Eighth Amendment rights by denying him
21 access to the courts, providing insufficient responses to his grievances, providing inadequate
22 medical care and subjecting him to verbal and physical harassment. Dkt. 45 at 1-2. On August
23 6, 2009, the Plaintiff filed a motion requesting return of his property and for a preliminary
24 injunction. Dkt. 45 at 2. Plaintiff alleges that on May 25, 2009, a staff member unnecessarily
25 searched and then seized his gym bag and falsely accused him of having received the gym bag
26 from an unidentified staff person. *Id.* Plaintiff also brings forth issues related to property

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1 confiscated during a search of bedroom in 2006, and to funds that were credited to his resident
2 trust account. *Id.*

3 On September 15, 2009, Plaintiff filed a motion entitled “Opposition and Plaintiff’s
4 Motion to Retract Previously Filed (TRO) Injunction Under CSN. C08-5541, and File it as a
5 Separate and Independent Action.” Dkt. 43. The Court has considered the Plaintiff’s filing as an
6 objection to the Report and Recommendation. In the Plaintiff’s motion, the Plaintiff disagrees
7 with the findings in the Report and Recommendation and seeks to retract his previously filed
8 TRO. Dkt. 46 at 1.

10 On September 28, 2009, the Defendants filed a response to the Plaintiff’s motion stating
11 that the motion was frivolous. Dkt. 47. The Defendants argue that if the Plaintiff did nothing
12 more in response to the Report and Recommendation, that the Plaintiff could then file a separate
13 action once the Report and Recommendation had been adopted. Dkt. 47 at 2. The Defendants
14 also request the court to admonish the Plaintiff from filing baseless motions. *Id.*

16 The Court agrees with the Report and Recommendation and the Defendant’s Response to
17 Plaintiff’s motion. The Plaintiff does not appear to disagree with the Report and
18 Recommendation as he is voluntarily withdrawing his motion for TRO, and therefore, the Report
19 and Recommendation should be adopted. The Court is also persuaded by Defendant’s argument
20 that whether adopting the Report and Recommendation or granting Plaintiff leave to withdraw
21 his motion will have the same result. In the interest of judicial economy, the Court should adopt
22 the Report and Recommendation and deny the Plaintiff’s motion.

24 The Plaintiff is reminded that even though he is acting *pro se* in this matter, he is still
25 bound by the Federal Rules of Civil Procedure and the Court’s Local Rules. The Plaintiff is
26 referred to Fed.R.Civ.P. Rule 11, which states in part:

1 By presenting to the court a pleading, written motion, or other paper... [the]
2 unrepresented party certifies that to the best of the person's knowledge,
3 information, and belief, formed after an inquiry reasonable under the
4 circumstances... it is not being presented for any improper purpose, such as to
5 harass, cause unnecessary delay, or needlessly increase the cost of litigation.

6 The Plaintiff is reminded that filing multiple motions or other documents of dubious legal merit
7 may expose the Plaintiff to sanctions by the court.

8 For the foregoing reason, the Court does hereby find and ORDER:

- 9 (1) The Court adopts the Report and Recommendation (Dkt. 45);
- 10 (2) Plaintiff's motion for temporary restraining order (Dkt. 43) is **DENIED**;
- 11 (3) Plaintiff's motion to retract previously filed temporary restraining order (Dkt. 46)
12 is **DENIED**;
- 13 (4) The Clerk is directed to send a copy of the Plaintiff's temporary restraining order
14 (Dkt. 43) to Plaintiff; and
- 15 (5) The Clerk is directed to send copies of this Order to Plaintiff, counsel for
16 Defendants and to the Hon. Karen L. Strombom.

17 DATED this 5th day of October, 2009.

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19 ROBERT J. BRYAN
20 United States District Judge
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